

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

GAVIN O'NEILL,

Plaintiff,

- against -

3LAB, Inc.

Defendants.

Case No. **2:23-cv-56**

**COPYRIGHT INFRINGEMENT**

**COMPLAINT**

Plaintiff Gavin O'Neill, for his Complaint against Defendant 3LAB, Inc., alleges as follows:

**LOCAL CIVIL RULE 10.1 STATEMENT**

1. The mailing addresses of the parties to this action are:

Gavin O'Neill  
c/o Higbee & Associates  
1504 Brookhollow Drive Suite 112  
Santa Ana, CA 92705

3LAB, Inc.  
100 West Sheffield Ave  
Englewood, NJ 07631

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### **JURISDICTION AND VENUE**

2. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.*

3. This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

4. This court has personal jurisdiction over Defendant because Defendant's acts of infringement complained of herein occurred in the state of New Jersey, Defendant's acts of infringement were directed towards the state of New Jersey, Defendant caused injury to Plaintiff within the state of New Jersey, and Defendant has a physical presence in the state of New Jersey.

5. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which substantial part of the acts and omissions giving rise to the claim occurred.

### **PARTIES**

6. Plaintiff Gavin O'Neill ("O'Neill") is an individual and professional photographer.

7. Defendant 3LAB, Inc. ("3LAB") is a privately owned company with an address of 100 West Sheffield Avenue Englewood, New Jersey 07631.

8. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as 3LAB, Inc., inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, "Defendant" shall mean all named Defendants and all fictitiously named Defendants.

### **FACTUAL ALLEGATIONS**

9. Gavin O'Neill is a highly successful freelance photographer specializing in beauty photography. O'Neill is most well-known for his model portraiture featured on his highly popular Instagram account @gavinoneillphoto, which has amassed over 141,000 followers.

10. O'Neill's portfolio includes editorial clients such as *Vogue*, *Marie Claire*, *Glamour*, *Cosmopolitan*, *GQ*, and many more.

11. Additionally, O'Neill's work has been used commercially by brands such as *Gillette*, *Olay*, *Garnier*, *KKW Beauty*, *Avon*, *Acuvue*, *RMS Beauty*, *Vodafone*, *Philips*, *Rolls Royce*, *L'Oreal*, *LUX*, *Oriflame*, *Boticario*, and *Ponds*.

12. O'Neill is the sole author and exclusive rights holder to one photograph of a model with hands placed over her face (the "Hands Photograph").

13. Attached hereto as Exhibit A is a true and correct copy of the Hands Photograph.

14. O'Neill registered the Hands Photograph with the United States Copyright Office under Registration Number VA 2-216-005.

15. Defendant 3LAB is a global leader specializing in high-tech skincare products. Their dynamic line of high-end, anti-aging products address multiple skin concerns from combating environmental damage to reducing fine lines and wrinkles.

16. 3LAB has been behind some of the biggest breakthroughs in the beauty industry. It Within the company are over 40 chemists who discover and utilize the highest-grade botanical ingredients and innovative scientific technology to "contest the forces of nature and time."

17. Its Super "h" serum is an antioxidant powerhouse, lauded by the editors at Allure and featured as a "top splurge" wared winner in the magazine's 2014, 2015, and 2016 Best of Beauty issue. Its Super Cream uses "smart" technology to deliver

antioxidants, encapsulated collagen, and elastin-producing peptides right where they're needed.

18. 3LAB maintains a Facebook page, <https://www.facebook.com/3LABSkincare> ("Facebook Page").

19. O'Neill is informed and believes 3LAB markets its products through its Facebook Page in order to attract user traffic and drive customer revenue.

20. On or about August 11, 2020, O'Neill discovered that the Hands Photograph was being used by 3LAB on its Facebook Page to promote its Perfect Hand Cream and portray potential results of what can be achieved with use of its product.

21. Attached hereto as Exhibit B is a true and correct screenshot of the use of Hands Photograph on 3LAB's Facebook Page.

22. As of the date of this Complaint, the Hands Photograph is still displayed on 3LAB's Facebook Page.

23. Attached hereto as Exhibit C is a true and correct time stamped screenshot of the continued use of the Hands Photograph on 3LAB's Facebook Page.

24. 3LAB never purchased a license to use the Hands Photograph in any manner.

25. O'Neill is informed and believes 3LAB uploaded the Hands Photograph to 3LAB's Facebook Page.

26. O'Neill has made several attempts to settle this case prior to the filing of this Complaint.

**FIRST CAUSE OF ACTION**  
**COPYRIGHT INFRINGEMENT**  
**17 U.S.C. § 101 *et seq***

27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

28. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Hands Photograph.

29. Plaintiff is informed and believes and thereon alleges that said Defendant willfully infringed upon Plaintiff's copyrighted Hands Photograph in violation of Title 17 of the U.S. Code, because, *inter alia*, the Defendant also knew or should have known that they did not have a legitimate license for the Hands Photograph.

30. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

31. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.

32. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- For a finding that Defendant infringed Plaintiff's copyright interest in the Hands Photograph by copying, displaying, and distributing it without a license or consent;
- For an award of actual damages and disgorgement of all of profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- For an injunction preventing Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502;
- For costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- For pre judgment interest as permitted by law; and
- For any other relief the Court deems just and proper.

Dated: January 5, 2023

Respectfully submitted,

**/s/ Melissa A. Higbee**

Melissa A. Higbee, Esq.

State Bar No. 30812012

**HIGBEE & ASSOCIATES**

1504 Brookhollow Dr., Ste 112

Santa Ana, CA 92705-5418

(714) 617-8350

(714) 597-6729 facsimile

[mclark@higbeeassociates.com](mailto:mclark@higbeeassociates.com)

*Attorney for Plaintiff*